Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 80-724

In the Supreme Court of the United States

OCTOBER TERM, 1980

ANABEL J. McCUTCHEON, Plaintiff-Petitioner,

vs.

78 C 3894

1. BOARD OF EDUCATION CITY OF CHICAGO
2. CAREY B. PRESTON
3. MARGARET WILD
4. HERBERT JOHNSON
5. HENRY McGEE
6. JOSEPH P. HANNON
7. WILLIAM ROHAN
8. GERARD J. HEING
9. NINA JONES

76 C 4763

10. CHICAGO PRINCIPALS Local 2, AFL-CIO
11. SAMUEL DOLNICK

76 C 4763

12. JOHN CAREY
13. THOMAS NAYDER
14. CATHERINE ROHTER
15. EDGAR G. EPPS
16. CARMEN VELASQUEZ
17. LOUISE MALIS
18. JAMES F. REDMOND
19. GUY BRUNETTI
20. MICHAEL WRENN
21. THOMAS FINNEGAN
22. BESSIE LAWRENCE
23. ANGELINE CARUSO
24. OTHO ROBINSON
25. SHIRLEY STACK
26. VINCENT J. CONROY

Defendants-Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF AND APPENDIX FOR RESPONDENTS

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Plaintiff-Petitioner,

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BRIEF AND APPENDIX FOR RESPONDENTS

As a response to the Petition for a Writ of Certiorari to object to its allowance, there follow some reasons.

It is our understanding that the Supreme Court grants certiorari as a matter of grace, or under the listed reasons as well as others, which are matters of moment and

worthy of the attention of the Justices of the Supreme Court: not merely to review the dog fight between petitioner and the respondents and their attorneys.

The cover of the petition says that the appeal is from the Court of Appeals for the Seventh Circuit and the decision from which the plaintiff appeals is the order of Judges Sprecher, Bauer and Wood dismissing petitioner's appeal for want of jurisdiction due to lack of timeliness. This order appears in petitioner's Appendix 1A and is only a dismissal by that Court of Appeals for failure to comply with the rules. The date of the order is June 26, 1980.

It would appear to us that the only consideration necessary for the petition for certiorari should be directed to that order of dismissal, which was an obviously correct and proper ruling[1] requiring the denial of the instant petition, and to none of the remaining seven questions for review. Nevertheless, we are obligated to answer each issue lest we be deemed to admit them by our silence.

---

[1] See Respondents-Appellees' Appendix immediately following hereinafter, pp. 1a-18a for their motion to dismiss, memoranda in support thereof, and relevant orders, which were filed in the United States Court of Appeals for the Seventh Circuit by Appellees and which are hereby incorporated by reference as part of their instant argument.

The first question for review is:

> "WHETHER THE ALL MALE COURTS PREJUDICIALLY ERRED BY THE DISCRIMINATORY APPLICATION OF RULES* FOR DEFENDANT MALE ATTORNEYS VS. FEMALE *PRO SE* PLAINTIFF, WHOSE ATTORNEYS, RETALIATION CHARGES WERE DISMISSED BEFORE TRIAL AS ALLEGED "GRIEVANCES" AND WHOSE APPEAL WAS DISMISSED WITHOUT CONSIDERATION OF THE RECORD OR TRIAL EVIDENCE."

No trial evidence was reviewed on appeal because the Court of Appeals found, upon respondents' motion to dismiss, that it had no jurisdiction. The ruling was contrary to petitioner's beliefs and she seems to be unhappy about it. This does not mean that she suffered a discrimination. It means only that the Court of Appeals found that it had no jurisdiction to further consider her appeal, a ruling with which respondents wholeheartedly agree. Any alleged grievances which petitioner may have had were decided by the Honorable John A. Nordberg, a judge of the Circuit Court of Cook County, Illinois (Case No. 77-L-21626, Administrative Review).

The second question for review is:

> "WHETHER H. STUART CUNNINGHAM, CLERK OF THE U.S. DISTRICT COURT, CONSPIRED WITH DEFENDANT ATTORNEYS TO SUPPRESS THE EVIDENCE."

We deny this question because of its absurdity, and suggest that this Court does not accept petitioner's question as a statement of fact. Secondly, had Miss McCutcheon actually wanted the documents rather than the appeal, she was offered the complete set of copies which

she had delivered one day to the offices of Heineke & Schrader. Petitioner served a copy of the 900 pages of documents upon the writer's office and at the beginning of the trial that copy of the evidence was offered to the plaintiff for her use. But, obviously, she wanted to complain about the loss of them, rather than to have them available.

The appendix also contains a copy of the notice from Mr. Cunningham's office addressed to the Honorable Thomas F. Strubbe, transferring from DC Docket Nos. 76-C-4763 and 78-C-3894, three volumes of pleadings, two in 76-C-4763 and one in 78-C-3894, and twenty-four volumes of transcripts.

On the filing of the first petition for certiorari, these documents were forwarded to the Clerk of the Supreme Court. It is our understanding from conversation with the Office of the Clerk of the Supreme Court that this petition was not accepted, and the documents were returned to Mr. Strubbe and were returned by Mr. Strubbe to Mr. Cunningham's office.

The records of this court will show that the second petition for certiorari was rejected by the clerk because it was late. The third petition, filed and served on us on November 1, 1980, with the revised appendix to the petition being received by us on October 13, 1980 was accepted and given a number, and petitioner was furnished with a form to notify us of the fact. From the date of filing, we have 30 days to respond. We received the notice which petitioner was supposed to file on us on November 20, 1980.

The rules provide that we may, if we wish, file a response within 30 days.

Why there should be five additional questions for review, we do not understand. We object, however, to Issue Number 3, which is predicated largely upon the fact that the motions of the defendant counsel were made by counsel who had failed to file an appearance for any individual, and had failed to separate them from a body politic Board of Education. We filed in apt time our appearance for all respondents we represent named in the first amended complaint. We do not understand the charge of a failure to separate them from the body politic, especially in view of the fact that the petitioner had named as one of the defendants, the Board of Education, the body politic.

The reference should probably be made to Appendix 34A, which has the appearance of Mr. Michael J. Murray, who is the attorney for the Board of Education for the City of Chicago. This was filed on April 2, 1980 and docketed April 15, 1980, which entered Mr. Murray's appearance "as counsel for defendants-appellees," which was docketed April 23, 1980. And, in addition to Mr. Murray, the appearances of Mr. Heineke, Mr. Scanlon, and Mr. Brown were listed.

Here a mistaken fact was again placed in the record by plaintiff, which was reiterated many times, although petitioner knew her statement was incorrect, and knew the reason why it was incorrect. Section 34-18.1 of Chapter 122 of the Illinois Revised Statutes for 1977 reads as follows:

> § 34-18.1 *Protection from suit.* The board of education shall insure or indemnify and protect the board, any member of the board or any agent, employee, teacher, student teacher, officer or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees

> and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights occurring on or after September 5, 1967, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, within or without the school premises, provided such board member, agent, employee, teacher, student teacher, officer or member of the supervisory staff, at the time of the occurrence was acting under the direction of the board within the course or scope of his duties.
>
> Amended by P.A. 78-737, § 1, eff. Sept. 10, 1973.

From a period of April, 1973 to April, 1976, there was an insurance policy obtained by the Board of Education pursuant to that statutory directive. That insurance policy had attached to it an endorsement which obligated the insurance company issuing it to protect the Board of Education against financial loss and expense "including reasonable legal fees and costs."

The fourth and fifth questions for review are sufficiently answered by the comments on the third question.

The sixth question concerning an alleged contract between the Board of Education and Mr. Mahron is not worthy of consideration by this Court. Mr. Mahron is not a party in this litigation. The Board of Education was not then nor is it now "defunct."

The seventh question for review asks this Honorable Court to decide:

"WHETHER THE ALL MALE CHICAGO JUDGES WERE COMPETENT AND UNBIASED (BEING POLITICALLY AFFILIATED WITH THE CITY OF CHICAGO) TO JUDGE THE MERITS OF THE PRECEDENT SETTING ISSUES (COMPLICATED BY THEIR OWN ERRORS OF CONSOLIDATION) RAISED BY A WOMAN *PRO SE* PLAINTIFF IN HER APPELLATE COURT BRIEF."

No where did the "male Chicago judges" of the Court of Appeals have anything to do with the consideration in which Judges Grady, Marshall, the Executive Committee of the District Court, Judge Parsons and Judge Leighton joined in effecting the consolidation.

Since none of the seven issues raised by petitioner has anything to do with the dismissal of her appeal by the Court of Appeals, respondents pray that the instant petition be denied. Respondents also deny each and every allegation of petitioner in which she otherwise argues for the granting of her petition. Respondents stand firmly upon the granting of their motion to dismiss by the United States Court of Appeals for the Seventh Circuit and maintain that that in itself is sufficient reason for this Court to deny this petition.

Respectfully submitted,

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Of Counsel:
CHRISTINE A. ZIELINSKI

APPENDIX FOR RESPONDENTS

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 80-1482

ANABEL J. McCUTCHEON,
Plaintiff-Appellant,

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 76-C-4763
No. 78-C-3894
Judge GEORGE N. LEIGHTON

U.S.C.A.—7th Circuit
Received in Clerk's Office
JUN 10 1980
THOMAS F. STRUBBE
Clerk

NOTICE OF FILING

To: Ms. Anabel J. McCutcheon
1917 Tanglewood Drive, Apt. 3B
Glenview, IL 60025

Michael J. Murray, Esq.
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Ronald S. Cope, Esq.
Ancel, Glink, Diamond & Murphy
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Chicago, IL 60601

Thomas P. Brown, Esq.
221 North LaSalle St.
Chicago, IL 60601

Please be advised that on Tuesday, June 10, 1980, I filed with the Clerk of the United States Court of Appeals for the Seventh Circuit the following:

Motion of Defendants-Appellees to Dismiss the Appeal in Case No. 80-1482

Memorandum of Law in Support of the Motion of Defendants-Appellees to Dismiss the Appeal in Case No. 80-1482

/s/ Paul H. Heineke
One of the Attorneys
for All Defendants

HEINEKE, BURKE & HEALY
135 South LaSalle St.
Chicago, IL 60603
236-6655

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 80-1482

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 76-C-4763
No. 78-C-3894
Judge GEORGE N. LEIGHTON

MOTION OF DEFENDANTS-APPELLEES TO DISMISS THE APPEAL IN CASE NO. 80-1482

Now come the defendants-appellees, the Board of Education of the City of Chicago, et al., by their attorneys Michael J. Murray and Paul H. Heineke, and move that this Honorable Court dismiss the appeal in case No. 80-1482 for the reason that this Court does not have jurisdiction to consider this appeal due to the failure of the plaintiff-appellant to file a timely notice of appeal. A memorandum of law in support of this motion is attached hereto.

Respectfully submitted,
/s/ Michael J. Murray
/s/ Paul H. Heineke

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UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 80-1482

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 76-C-4763
No. 78-C-3894
Judge GEORGE N. LEIGHTON

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION OF DEFENDANTS-APPELLEES TO DISMISS THE APPEAL IN CASE NO. 80-1482

The notice of appeal in this case was not timely filed. Therefore, this Honorable Court has no jurisdiction to consider this appeal.

Final judgment in this case was entered on February 25, 1980 in favor of the defendants-appellees, (I.R. #105). Plaintiff-appellant filed a motion for a rehearing on March 14, 1980, (I.R. #104). It was not until March 31, 1980 that plaintiff-appellant filed a notice of appeal, (I.R. #112). On April 4, 1980 plaintiff filed a motion to reconstruct the complete 76-C-4763 file, (I.R. #108). Also on April 4, 1980, plaintiff filed a motion for a temporary restraining order against attorney John B. Schwartz, (I.R. #110).

Plaintiff's motion for a rehearing was denied on March 25, 1980, without expression of any view concerning its timeliness, (I.R. #107). The Court in its Minute Order said:

". . . After reviewing plaintiff's allegations, it appears plaintiff seeks the opportunity to reargue the case this court has heard thoroughly, and to which careful attention has been paid to each of plaintiff's many claims. (I.R. #107)."

Plaintiff's motion to reconstruct, amend, and certify the 76-C-4763 file was granted on April 8, 1980, (I.R. #109). Plaintiff's motion for a temporary restraining order against attorney John B. Schwartz was denied on April 7, 1980, (I.R. #113).

The Federal Rules of Appellate Procedure for the United States Court of Appeals, specifically Rule 4(a), are applicable and govern appeals in Civil cases such as this. Rule 4(a) provides:

"(a) Appeals in Civil Cases.

(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of the entry of the judgment or order appealed from; . . ."

The date of the entry of the judgment or order appealed from in this case is the final judgment in favor of the defendants-appellees which was entered on February 25, 1980. As explained hereinafter, plaintiff-appellant's motion for a rehearing was itself untimely, even though the motion was denied not because of time but because plaintiff sought to reargue the entire case which had just been heard thoroughly by the court, which had paid careful attention to each of plaintiff's many claims. (See: I.R. #107, *supra.*)

Plaintiff's motion for a rehearing was untimely according to either of the relevant Federal Rules of Civil Procedure: Rule 50b, Rule 52b or Rule 59. Rule 50b provides:

"(b) Motion for Judgment Notwithstanding the Verdict.

. . . *Not later than 10 days after entry of judgment,* a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; . . ." (Emphasis added.)

Rule 52b provides:

"(b) Amendment. *Upon motion of a party made not later than 10 days after entry of judgment* the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. . . ." (Emphasis added.)

Rule 59 provides:

"New Trials; Amendment of Judgments.

. . . (b) Time for Motion. A motion for a new trial shall be served *not later than 10 days after the entry of the judgment.*" (Emphasis added.)

Plaintiff-appellant had 10 days from the date of entry of the final judgment order within which to file her motion for a rehearing. The final judgment was entered February 25, 1980. Plaintiff's motion for a rehearing was not filed until March 14, 1980, 18 days later. Plaintiff's Notice of Filing alleges that the Motion was filed on March 12, 1980. If this were factual, then plaintiff's motion would have been six days late. If plaintiff mailed in her motion and was entitled to an additional three-day grace period, then her motion for a rehearing is still late. Therefore, the time within which plaintiff's notice of appeal should have been filed was never tolled. Plaintiff, therefore, had 30 days from the date of entry of the final judgment order within which to file her notice of appeal. Plaintiff's Notice of Appeal was filed March

31, 1980, *thirty-five days after the entry of the final judgment order in favor of the defendants-appellees.* Plaintiff's Notice of Appeal was not timely. Therefore, this Court has no jurisdiction to consider this appeal.

A case in point which supports the argument of defendants-appellees is *Browder* v. *Director, Department of Corrections of Illinois,* 434 U S 257, 54 L Ed 2d 521, 98 S Ct 556 (1978) (hereinafter referred to as *Browder*). In *Browder, supra,* the United States District Court for the Northern District of Illinois granted petitioner's petition for a writ of habeas corpus. Respondent's notice of appeal was untimely. On appeal, the United States Court of Appeals for the Seventh Circuit reversed not because of time, but on the merits. On certiorari, the United States Supreme Court reversed. In an opinion expressing the unanimous view of the court, it was held that the Court of Appeals lacked jurisdiction to review the order granting the petition due to the untimeliness of the appeal under the requirement of Rule 4(a) of the Federal Rules of Appellate Procedure and 28 USCS §2107 that a notice of appeal in a civil case be filed within 30 days of entry of the judgment or order from which the appeal is taken. The Court reasoned that since respondent's post-trial motions were untimely under Federal Rules of Civil Procedure 52 and 59, that the time for appeal was not tolled under the terms of Rule 4(a) of the Federal Rules of Appellate Procedure.

The Court in *Browder, supra,* said at 434 U S 264 that:

> "Under Fed. Rule App. Proc. 4(a) and 28 U S C §2107 [28 U S C S §2107], a notice of appeal in a civil case must be filed within 30 days of entry of the judgment or order from which the appeal is taken. This 30-day time limit is 'mandatory and jurisdictional.' *United States* v. *Robinson,* 361 U S 220, 229, 4 L Ed 2d 259, 80 S Ct 282 (1960). See also *Fallen* v. *United States,* 378 U S 139, 12 L Ed 2d 760, 84 S Ct 1689 (1964); *Coppedge* v. *United States,* 369 U S 438, 442, 8 L Ed 2d 21, 82 S Ct 917 (1962); *United States* v. *Schaefer Brewing Co.,* 356

U S 227, 2 L Ed 2d 721, 78 S Ct 674, 73 A L R 2d 235 (1958); *Matton Steamboat Co.* v. *Murphy,* 319 U S 412, 415, 87 L Ed 1483, 63 S Ct 1126 (1943); *George* v. *Victor Talking Mach. Co.,* 293 U S 377, 379, 79 L Ed 439, 55 S Ct 229 (1934). The purpose of the rule is clear: It is 'to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant's demands. Any other construction of the statute would defeat its purpose.' *Matton Steamboat, supra,* at 415, 87 L Ed 1483, 63 S Ct 1126."

Other cases which agree that a timely notice of appeal is a jurisdictional prerequisite to appellate review are: *Brooks* v. *Norris,* 52 U S 204, 13 L Ed 665 (1850); *Cummings* v. *Jones,* 104 U S 419, 26 L Ed 824 (1882); *Scarborough* v. *Pargoud,* 108 U S 567, 27 L Ed 824, 2 S Ct 877 (1883); *Credit Co.* v. *Arkansas C. R. Co.,* 128 U S 258, 32 L Ed 448, 9 S Ct 107 (1888); *Conboy* v. *First Nat. Bank,* 203 U S 141, 51 L Ed 128, 27 S Ct 50 (1906); *Old Nick Williams Co.* v. *United States,* 215 U S 541, 54 L Ed 318, 30 S Ct 221 (1910); *Brainerd* v. *Beal,* 498 F 2d 901 (7 Cir 1974); *Harris Truck Lines, Inc.* v. *Cherry Meat Packers, Inc.,* 303 F 2d 609 (7 Cir 1962).

Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the case. See: *Ex Parte McCardle,* 74 U S 506, 514, 19 L Ed 264 (1869).

WHEREFORE, Defendants-Appellees pray for an order dismissing the appeal in this case for the reason that this Court does not have jurisdiction to further consider this appeal.

Respectfully submittted,
/s/ Michael J. Murray
Michael J. Murray
/s/ Paul H. Heineke
Paul H. Heineke

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236-6655

CERTIFICATE OF MAILING

I, PAUL H. HEINEKE, hereby certify that on June 10, 1980, I served copies of the following documents entitled:

Motion of Defendants-Appellees to Dismiss the Appeal in Case No. 80-1482;

Memorandum of Law in Support of the Motion of Defendants-Appellees to Dismiss the Appeal in Case No. 80-1482; and Notice of Filing

upon the following:

Ms. Anabel J. McCutcheon
1917 Tanglewood Dr., Apt. 3B
Glenview, IL 60025
(Certified Mail No. 534134-Return Receipt Requested)

Ronald S. Cope. Esq.
Ancel, Glink, Diamond & Murphy
180 North LaSalle St., Rm. 2600
Chicago, IL 60601

Michael J. Murray, Esq.
Board of Education of the City of Chicago
228 North LaSalle St., Rm. 312
Chicago, IL 60601

Thomas P. Brown, Esq.
221 North LaSalle St.
Chicago, IL 60601

by placing a copy of said documents in a properly addressed envelope with proper postage prepaid and then inserting it in the United States Mail Chute located at 15 South LaSalle St., Chicago, IL 60603, a copy of which is hereto attached.

/s/ Paul H. Heineke

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

June 12, 1980

No. 80-1482

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
Nos. 76-C-4763 & 78-C-3894
Judge GEORGE N. LEIGHTON

NOTICE TO RESPOND

TO: Ms. Anabel J. McCutcheon,
1917 Tanglewood Dr., Apt. 3B,
Glenview, IL 60025
Mr. Thomas P. Brown,
221 N. LaSalle Street,
Chicago, IL 60601

A RESPONSE (AN ORIGINAL AND THREE COPIES, WITH PROOF OF SERVICE) IS REQUIRED ON OR BEFORE June 23, 1980

TO the "MOTION OF DEFENDANTS-APPELLEES TO DISMISS THE APPEAL IN CASE NO. 80-1482" filed herein on June 10, 1980 by counsel for the defendants-appellees.

Copies to:

Mr. Michael J. Murray, 228 North LaSalle Street,
Chicago, IL 60601
Mr. Paul H. Heineke, 135 South LaSalle Street,
Chicago, IL 60603

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

No. 80-1482

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Nos. 76-C-4763 & 78-C-3894

Judge GEORGE N. LEIGHTON

RESPONSE TO DEFENDANTS-APPELLEES MOTION TO DISMISS IN CASE

No. 80-1482

Now comes the defendants-appellees in the United States District Court case, docket number 78 C 3894, to wit, Board of Education of the City of Chicago, Carey B. Preston, Margaret Wild, Herbert Johnson, Henry McGee, Joseph P. Hannon, William Rohan, Gerard J. Heing and Nina Jones, by one of their attorneys Thomas P. Brown, and pursuant to the Court's order of June 12, 1980, submit this "Response."

1. Counsel Thomas P. Brown, representing the defendants, as above noted (in 78 C 3894), specifically joins in the motion to dismiss this appeal, including the memorandum in support thereof.

2. As additional grounds, defendants aver that plaintiff has never filed an appeal in 78 C 3894.

3. With regard to U.S.D.C. 78 C 3894, the following docket entries are relevant:

(a) Consolidating of 78 C 3894 with 76 C 4763 (NR. 11 (a) & (b), per orders of November 6 and 8, 1978.

(b) Order dismissing cause as to all individual defendants; direct defendant Board of Education to answer the complaint; vacate all prior orders of consolidation; consolidate the remaining action with 76 C 4763 for trial (NR. 22), entered December 4, 1979.

(c) Judgment order that plaintiff take nothing. (NR. 29), entered February 27, 1980, per order dated February 25, 1980.

4. With regard to 76 C 4763, that docket contains these additional relevant entry:

(a) Judgment order that plaintiff take nothing (NR. 105), per order dated February 25, 1980.

(b) File plaintiff's notice of appeal (NR. 112), dated March 31, 1980.

5. Plaintiff has therefore initiated only one appeal, but in 76 C 4763, and not in 78 C 3894.

6. The consolidation of the case against the sole remaining defendant in 78 C 3894, the Board of Education, was for purposes of trial only; and upon the entry of a final order, the plaintiff must file a timely notice in each civil case in which she intends to appeal, Fed. Rules of App. Proced., Rule 4(a).

7. The sole procedure for consolidated appeals is contained in F.R.A.P. Rule 3(b), but this rule cannot be implemented until and unless the appellant affects a timely notice of appeal in all cases which are to be considered for consolidation.

8. Plaintiff-appellant's notice of appeal assigned eleven trial errors, all applicable to the trial in 76 C 4763:

a) One error assigned to date of final order.

b) Three errors assigned to court rulings re: examination of witnesses.

c) One error assigned to the denial of the petition for rehearing.

d) Two errors assigned to the pre-trial dismissal of various defendants in Count II and Count IV of the Amended Complaint, upon motions by their counsel.

e) Two errors assigned to consolidations.

f) One error assigned to a denial of change of venue.

g) One error assigned to the trial judge's ruling upon the order of presenting evidence.

9. Plaintiff's Petitions for Rehearing were filed only in 76 C 4763, and related to the dismissal, or summary judgment, of the Chicago Principals' Association defendants (NR. 106,107,111).

10. Accordingly, plaintiff-appellant has not only never filed a notice of appeal in 78 C 3894, she has indicated by the post-trial motions and notice of appeal in 76 C 4763 that this is the only case on appeal before the Court of Appeals.

Wherefor, inasmuch as plaintiff-appellant has failed to file a timely notice of appeal and, in any event, has never filed a notice of appeal in 78 C 3894, this honorable Court should dismiss the appeal forthwith.

Respectfully submitted,
/s/ Thomas P. Brown
Thomas P. Brown

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221 N. LaSalle Street
Chicago, Illinois 60601

CERTIFICATE OF SERVICE

I, Thomas P. Brown, the attorney, certify that I caused a copy of the attached Response to Defendants-Appellees Motion to Dismiss in Case No. 80-1482 to be served on parties of record by depositing it in the United States mail, with full postage prepaid, at Chicago, Illinois, before the hour of 5 p.m. on June 23, 1980.

/s/ Thomas P. Brown
Thomas P. Brown

Thomas P. Brown
221 N. LaSalle Street
Chicago, Illinois 60601

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

June 26, 1980.

Before

Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. HARLINGTON WOOD, JR., Circuit Judge

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

No. 80-1482

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Nos. 76-C-4763 & 78-C-3894

Judge GEORGE N. LEIGHTON

This matter comes before the court for its consideration upon the following documents:

1. The "MOTION OF DEFENDANTS-APPELLEES TO DISMISS THE APPEAL IN CASE NO. 80-1482" filed herein on June 10, 1980.

2. The "RESPONSE TO DEFENDANTS-APPELLEES MOTION TO DISMISS IN CASE NO. 80-1482" filed herein on June 23, 1980, by counsel for the defendants-appellees.

3. The "PLAINTIFF'S RESPONSE TO THE COURT ORDER TO RESPOND TO THE "MOTION OF DEFENDANTS-APPELLEES TO DISMISS THE APPEAL IN CASE NO. 80-1482 FILED herein on June 10, 1980, by Counsel for the Defendants-Appellees." filed herein on June 23, 1980.

4. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *BESSIE LAWRENCE*" filed herein on June 23, 1980.

5. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *JAMES MOFFAT*" filed herein on June 23, 1980.

6. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *JOHN CAREY*" filed herein on June 23, 1980.

7. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *SAMUEL DOLNICK*" filed herein on June 23, 1980.

8. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *NINA JONES*" filed herein on June 23, 1980.

9. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *GERARD J. HEING*" filed herein on June 23, 1980.

10. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *WILLIAM ROHAN*" filed herein on June 23, 1980.

11. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *JOSEPH P. HANNON*" filed herein on June 23, 1980.

12. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *HENRY McGEE*" filed herein on June 23, 1980.

13. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *HERBERT JOHNSON*" filed herein on June 23, 1980.

14. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *MARGARET WILD*" filed herein on June 23, 1980.

15. The "PLAINTIFF'S MOTION FOR A SUMMARY JUDGMENT OF DEFAULT AGAINST DEFENDANT *CAREY B. PRESTON*" filed herein on June 23, 1980.

16. The "PLAINTIFF'S MOTION TO STRIKE WITH PREJUDICE THE INACCURATE: "MOTION OF DEFENDANTS-APPELLEES TO SUPPLEMENT THE RECORD ON APPEAL AND MOTION OF DEFENDANTS-APPELLEES FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE BRIEF" filed herein on June 23, 1980.

Treating plaintiff-appellant's motions for summary judgment as responses to the defendants-appellees' motion to dismiss,

IT IS ORDERED that the defendants-appellees' motion to dismiss is hereby GRANTED and this appeal from a decision of the United States District Court for the Northern District of Illinois is hereby DISMISSED.

IT IS FURTHER ORDERED that the "PLAINTIFF'S MOTION TO STRIKE WITH PREJUDICE THE INACCURATE: "MOTION OF DEFENDANTS-APPELLEES TO SUPPLEMENT THE RECORD ON APPEAL AND MOTION OF DEFENDANTS-APPELLEES FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE BRIEF" is hereby DENIED.